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THE MALABAR MARRIAGE BILL—(*continued*).

Having discussed the necessity for a legislative enactment to provide a legal marriage for the followers of the *Marumakatayam* system in Malabar, we shall now proceed to consider the main provisions of the intended legislation as finally modified by the Government of Madras and the Supreme Government. The majority of the Commissioners who signed the report differ considerably in several respects from the President the Hon. Sir T. Muthusamy Aiyar, and as already observed, the Government in the main, accept the opinions of the President with certain modifications. The principal questions that called for a solution were (1) the form of marriage to be introduced, (2) the restrictions as to caste, consanguinity, age, &c., to which marriage under the act should be subjected, (3) the conditions of divorce, (4) the civil rights to be attached to marriage, the chief of which are the right of the wife and children to inherit the property of the husband or the parents, the right of guardianship, the right of maintenance, the right of the wife to reside with the husband and of the husband to compel the wife to live with him. Every one of these questions is beset with difficulties of a serious and peculiarly complicated nature, and as they affect the social if not also the religious life of the people, they require delicate handling. The learned president's views are generally cautious and conservative while those of Mr. Winterbotham and Mr. Sankaran Nair are radical and thorough—going. The latter are in favour of ignoring all distinctions of caste and freely sanctioning inter-marriages, while the former considers it utterly impolitic and unwise to pass any law that does not take due account of so potent a factor in Hindu society as caste. The president is anxious to preserve intact all restrictions of consanguinity as they now exist, while the radical Commissioners wish to minimise as much as possible what they regard as artificial

and unwise restraints on marriage. Mr. Sankaran Nair contends that the claims of a lawfully wedded wife and her children are paramount and claims for them the whole of the property that a man may die possessed of unless he has disposed of them by will. Sir T. Muthusamy Aiyar resents any such rude attack on so old a foundation of the Malabar society as *Marumakatayam*, and is anxious to preserve the *tarwad* system while recognising the claims of the wife and children to the property acquired by a man; the same anxiety makes the president unwilling to transfer the guardianship of the woman and her children altogether to her husband, but Mr. Sankaran Nair would have no half measures. All the Commissioners and the Government agree in one thing only, the expediency and justice of giving absolute testamentary power to every person over his or her own self-acquisitions. The difficulty in arriving at a correct conclusion on all these matters is much enhanced by the fact that *Marumakatayam* society in Malabar is in a transitional stage. The rules of consanguinity once strict are now becoming loose; the restraints upon the selection of a husband or wife due to the numerous sub-dvisions in the same caste are fast crumbling down. The claims on a man of his wife and children are gradually receiving wider and stronger recognition. While it would not be in accordance with the principles of administration adopted by the British Government to ignore caste in any enactment they may pass, it will be equally against its traditions and the accepted rules of a progressive Government to impede any improvements actually taking place by interposing the fossilizing influence of a statutory enactment. So again, while it may not be wise by a sudden and revolutionary measure to sweep off a system like *Maruakatayam* that has unquestionably subsisted for many centuries, the Government should carefully examine it and see whether it is likely to live or deserves to live, before strengthening it with artificial buttresses. It appears to us that the learned president has failed to grasp the whole situation when he adopts precautionary measures to preserve *Marumakatayam* as far as possible, while willing to pass the demanded marriage law for Malabar. If the law is availed of by any considerable section of the people we think the destruction of the *tarwad* would be an inevitable result. Let us just look at the probable consequences a little. When the people begin to appreciate

the new statute, and the women in a family get married under it, it is to be expected that they will leave their natural homes for those of their husbands. The men also will probably set up new homes for themselves each according to his means, and the *tarwad* home will practically be deserted or peopled only by such males and females as do not or cannot marry. It is most likely that a man's attachments would then be centered in, nay absolutely absorbed by, his own family in the true and strict sense of the word. When most of the men and women forsake their ancestral roof, who would be interested in maintaining the unity of the *tarwad* property? Even now we find that many a woman who is fortunate enough to get a husband who will permit her to live with him permanently does not return to her *tarwad,* unless it happens to be more than ordinarily opulent, but founds a new home of her own. We cannot but think that when the new law begins to operate in any large measure, partition must become the rule in *Marumakatayam* families and the system which has lived so long will perish. The enactment of the new law means a decisive blow to nepotism. The president deprecates any insidious attacks upon the old social fabric and holds that if *Marumakatayam* is to die, the right and straightforward mode of legislation is to give to every member of a *tarwad* the right to demand partition. We confess we are unable to see that legislation should attack existing evils (supposing them to be evils) in the direct fashion that the president suggests: on the other hand indirect measures are preferable because less revlutionary. But whatever the truth on this matter be, we think the enactment of the marriage law itself will be a most effective, and indirect bolw to *Marumakatayam.* It seems very likely that though the Act is intended to be only permissive, it will become popular as apprehended by the opponents of the measures; and it is well that the Government should realise how far reaching the consequences of their measure are likely to be. We are unable to sympathise with the president in his anxiety to secure to the *tarwad* a portion of the self-acquisition of a member marrying under the new law. There is great force in the objection of the majority that in many cases such property is not likely to be larger than is necessary for the subsistence and comfort of the wife and children and we doubt the wisdom of giving them less after the recognition of their status by law. At the same time we admit that the generality of the people

are not likely to approve of a statute expressly declaring that the *tarwad* is entitled to no share in the acquisitions of its members.

The question of divorce is perhaps the most difficult of all in connection with the bill. It has to be remembered that those for whom the bill is intended are now in a state of absolute freedom and that any strict rules of divorce are not likely to command the approbation of the people; but we sympathise with the hesitation of the Government to enact a marriage law without at the same time taking adequate steps to ensure stability in the matrimonial union. The learned president sketches two alternative schemes, one to leave divorce practically free, a marriage registered under the Act being dissoluble by mere notice, followed by a period of probation, the other, to permit divorce in all cases, but in the absence of some proper cause for the same, to punish the person improperly repudiating the marital relation by the imposition of a heavy fine as of a fourth of his or her self-acquired property for the benefit of the innocent husband or wife and the children of the marriage. The Madras Government accepted the former scheme but the Government of India is inclined in favour of the latter and has directed a reconsideration of the question. We think it would not be impossible as suggested by the president to refer issues of facts relating to conjugal frailty on which the sufficiency or otherwise of the ground for the divorce will depend to a caste jury or Punchayet so as to avoid scandalous and demoralising revalations in public courts of justice. We think it necessary that some attempt should be made to restrain absolute liberty in getting rid of the matrimonial tie and we apprehend that the law will stand condemned if it does not check the vagaries of individual passions which are now often a serious source of complaint.

If the question of guardianship is to be dealt with in the bill, we think that the recommendation of the majority that it should always be vested in the husband or father certainly possesses the merit of simplicity, but it is impossible to overlook the fact that it would be inconvenient and impracticable to deny certain rights of guardianship at least, to the *Karnavan* of the *Tarawad* where the woman and her children are living in her natural home. It would be impossible for the *Karnavan* to govern the household without possessing powers of correction over every member of it. With regard to the ancestral property perhaps, the *Karnavan* would be

entitled to the guardianship over all juniors whether they live in the *Tarawad* house or not, while the husband or the father is likely to be better qualified to safeguard the interests of his wife or children in their separate or self-acquired property even though they may live with their *Karnavan*. We think the matter is so complicated owing to the mixed state of the *Marumakatayam* society, that it will be better to watch the operation of the new law and delay for a time the enactment of legislative provisions with regard to guardianship. We do not think that there is any practical urgency to decide the question at once but inexpedient legislation may give rise to unnecessary friction.

The bill confers the right to maintenance on the wife and children as against the husband or father, the latter being entitled in answer to the wife's claim to plead any defence open to him under the Hindu Law. The wife and children will at the same time retain their rights to be maintained by their own *Tarawads*. This does not mean of course, that the wife or children would always be entitled to be maintained in the *Tarawad* house of the husband or father. The claim can only be as against his self-acquired property. The Madras Gouernment considered it unnecessary to confer on either husband or wife, the right to restitution of conjugal rights as they were inclined to make divorce absolutely free. But if a different view is taken of this question as suggested by the Government of India, it may be necessary if complete legislation is to be attempted, to introduce the rules suggested by the president, that the husband where he possesses self-acquired property or separate income and is able to support his wife and children should be entitled to require her to live with him and the wife should also be invested with a similar right to live with her husband.

We have not thought it necessary to go minutely into the bill. We are strongly of opinion that the legislation should be simpler and cover a narrower ground than it now does. Those who demand legislation will perceive that by taking only a small instalment now they will in the fulness of time be enabled to obtain larger rights than they can well ask the Government to grant them now. The Government by restricting the scope of the bill, will be able to avoid many a point of friction between those

who are anxious to preserve the existing state of things and those who advocate a radical change in the social fabric. It will be able to gauge the public mind regarding the new law and to watch and ascertain its results. They will be able to see whether in the opinion of the people, it is necessary or expedient to prolong the life of *Marumakatayam* by means of legislative props. It will avoid the censure of passing revolutionary measures on the one hand and of destroying the utility of its own law on the other. In conclusion, we may be permitted to repeat our hope that the Government may be induced to reconsider their resolution not to prohibit in terms what is in reality already condemend by the better and we believe, the larger section of the *Marumakatayam* community itself, we mean polygamy, polyandry and infant marriage. The Government will show that their own moral sense is at least as high as that of the people and that they are ready to give legislative sanction to the verdict of the leaders of the Community.

We would suggest that the most expedient course would be to confer unrestricted right of testation and to leave the question of intestate succession where it is at present. We think it very unlikely that many cases will occur where a person having property to dispose of will fail to provide for his wife and children. When the new law has been in force for some years and public opinion has had time to form itself under the new circumstances, it would be more easy to come to a correct decision as to whether any claims on the part of the *tarwad* should be recognised to a man's self-acquired property. In a matter like this where conflicting considerations of considerable importance cannot be lightly set aside we think it better and safer not to make the legistation comprehensive but to do what is most needful first and take time to judge how next to proceed. For other weighty reasons too, we think it would be an advantage to leave the question of intestate succession untouched. The Government have resolved and we think they could not have done otherwise, to recognise the restrictions of caste and sanguinity proposed by the president, but both the president and the Government are desirous that the reformation now going on in society in regard to these matters should not in any way be affected. The president therefore in proposing the recognition of all customs having a legal basis suggested the insertion of the words 'for the time being' so as to provide for changes in custom. But it has been established by

decisions that only existing customs are entitled to recognition by the courts, and no new customs can be legally valid, for they would be wanting in the antiquity necessary to a good custom. The Government therefore consider the addition of these words useless, but still they think somehow that "room will in this way be left for development and change of custom." This can only be possible so long as the customs have not been judicially ascertained. We therefore consider it of great importance to diminish the occasions for determining the validity of marriages under the Act The question of intestate succession is sure to give rise to disputes regarding it and we would therefore like to avoid the necessity for solving it until the liberal ideas regarding sects and sub-sects and the limits of consanguinity preventing marriage succeed in inducing a simpler and more satisfactory state of society. Other questions also such as gardianship, which may cause friction between the *karnavan* of the *tarwad* and the husband and lead to litigation may be also left over for the present. In North Malabar where in many cases the woman lives with her husband, no pressure has been felt for the determination of such cases. We entertain hopes that in course of time society will recognise that the husband or the father ought to have the full rights of gardianship in preference to the *karnavan,* though legislation ignoring the *karnavan's* rights may be both inexpedient and likely to evoke opposition now. We would strongly recommend that the legislation on the whole subject should be fragmentary covering only the absolutely indispensable portion of the ground. The liberal section of the *Marumakatayam* community will do well to urge this, because it will make it easier for them in time to get the whole of what they want, unhampered by the effects of legislation partially adverse to them. The conservative section cannot oppose it, because it leaves all their rights undisturbed, and if the voice of the community itself is for further changes, they have no one to blame for it. The Government also will have the opportunity of watching the effects of the new order of things before undertaking, if need be, comprehensive legislation. We think it will be enough to settle the form of the marriage to be recognised, to lay down that it shall be subject to all customs of consanguinity and caste, and to decide how and subject to what limitations divorce shall take place.

Before proceeding to make a few remarks on the details of the measure, we cannot but express our regret that the Government in

modifying the scheme of the commission have ignored one important principle. We take it to be a primary rule of legislation that the Government will not sanction any that is opposed to its own standard of morality. Some concession may be made where the community affected by a law belong to a distinct lower grade of society than the people of the country generally, but the rule certainly is to raise as far as possible the standard of morality and to sanction nothing that is appreciably below what the Government can approve of—see the remarks of *West J.*, in *Mathuru Naikin* v. *Eesu Naikin,* I. L. R, 4 B, 545 and Professor Gray on custom, 2 M. L. J, p. 329. Where the better portion of a community condemns an obnoxions custom, we think Government ought to help the reformation by forbidding the custom. Now in Malabar by far the largest section of the *Marumabatayam* followers disapprove of polyandry and the majority are against polygamy also. We think the Government in enacting a marrage law for the first time ought to forbid both especially as the law will affect only those who choose to avail themselves of a permissive law. We regret that the Government have overruled the commission and held that nothing need be said about these important questions. The same remarks apply to the marriagable age of girls. Infant marriage is extremely uncommon in Malabar and public opinion is quite against it. We think the Government would have done well to adopt the president's suggestion to fix 18 and 14 as the minimum marriagable age for men and women respectively.

We shall now proceed to say a word on some of the other questions dealt with by the bill. We have already expressed our opinion that the bill ought to recognise the customary restrictions of caste and consanguinity. On the question of the form in which the marriage is to be celebrated the majority of the commission and the president differ and the Government agree with the latter. We have already observed in our former article that there is generally some formality or other observed when a man takes a woman as his consort such as giving clothes to the woman, &c. The difference between the president and the majority consists in that the former requires that this customary form should be gone through in addition to registering a declaration that the man and woman have agreed to live as husband and wife, while the majority consider that the registration itself and alone should constitute the marriage. We

cannot but think that the view of the majority is the more correct. In the first place, the forms are by no means always observed and they cannot be said to be uniform, secondly they vary according to the caste of the bride and bridegroom, and their social position and in some instances as in the case of ladies belonging to the *Kovilagams* there is really no formality at all observed, thirdly the ceremony, it is generally agreed, has no religious significance and where the marriage has been registered, it is inexpedient to allow it to be further questioned by instituting an enquiry whether the ceremonies which are held in very varying degrees of respect have been observed, lastly, those who attach any importance to these ceremonies would be perfectly free to perform them before registering them and they can in no way be affected by the Act omitting them.

USURY LAWS.

'To speak of the abolishing of usury is idle: all states have ever had it in one kind or rate or other: so as that opinion must be sent to Utopia.'—Bacon. This wise saying of Lord Bacon holds good up to this day and will perhaps do so to the end of this world. The folly of laws restricting interest was successfully exposed by Jeremy Bentham in his essay entitled 'Defence of Usury,' which was published in England in the year 1787. The prejudices that gave rise to the Usury Laws maintained their ground for nearly half of the present century, long after every thinking man was convinced that such an interference with private trade was positively detrimental to public prosperity and was clearly opposed to the principles of civil liberty and public policy. The repeal of those laws in India has brought into existence a body of case-law an examination of which in detail will be of some interest to the public, specially to the lawyer and the money-lender. India teems with Shylocks still who will not only gladly agree to take from you your 'pound of flesh' but will pretty nearly succeed in doing so through the machinery of our courts of justice, as the law is still the pre-engaged servant of the long purse. An attempt has been made in the following paragraphs to show how the law regarding interest stands at the present day and how far it is anomalous and requires amendments at the hands of our Legislature.

The first and most important question which arises in the discussion of the laws of usury is 'How much interest is recoverable by a party who has advanced a loan to another?'

Since the repeal of those laws by Act XXVIII of 1855, a party is quite at liberty to contract a loan at any rate of interest he likes and he is bound to pay at that rate to his creditor. A contract to pay interest is sometimes implied from custom and usage, but in the absence of these an express stipulation is essential. The rule of Hindu law is that interest exceeding in amount the principal sum lent cannot be realized at one time. You may take almost any amount as interest, if you take it by degrees; but you cannot recover at any one time more interest than what is equal to the principal. *Manu* allows an exorbitant rate of interest in special cases, but if it is allowed to run on, it is stopped when it becomes equal to the principal. This rule of Hindu law which is better known to lawyers as the rule of *Damdupat* prevails, where the parties are Hindus, in the courts of the Bombay Presidency and the Original Side of the Calcutta High Court. In Madras and in the provinces of Calcutta and elsewhere it has been ruled, however, that the Hindu law is not binding with respect to such matters and no such limitation exists.

The latest case on this point decided by the Calcutta High Court is *Nobin Chunder Bannerjee* v. *Romesh Chunder Ghose*, I. L. R, 14 C, 781. After narrating the facts of the case their Lordships, *Justices Prinsep, Wilson* and *Norris* say :—' It is well settled that in this province, outside the Presidency town, no rule limiting the amount of interest to a sum equal to the principal prevails. This has been held in *Deen Doyal Poramanick* v. *Kylas Chandra Pal Chowdhry*, I. L. R, 1 C, 92 and others, and it is no doubt an anomaly that there should be one rule in Calcutta on such a point and another outside it. But a comparison of the history of the law of contracts in the Presidency town with that in other parts shows, we think, that the difference *does* exist. The statute 21 George III C, 70, S. 17, required the Supreme Court of Fort William to determine "all matters of contract and dealing between party and party in the case of Gentoos by the laws and usages of Gentoos." There was never any such legislative provision in force in the rest of the province. The result was that as between Hindus, the Supreme Court was expressly bound to give effect to the Hindu law of contracts, and the Hindu law of

contracts included the law of *Damdupat*. The High Court by its first Charter was required to administer the same law as the Supreme Court, and the second Charter continues the same law as was in force under the first. It appears to follow of necessity that the law of *Damdupat* is in force in this court between Hindus, unless there has been some legislative enactment inconsistent with it.'

The judgment then goes on to say: 'The only Act said to be inconsistent with it, and therefore to overrule it, is the Act for the repeal of the Usury Laws. But we think there is nothing in that Act inconsistent with the rule now in question. And the authorities are unanimous in favour of that view. To this effect are the decisions of *Sausse, C.J.*, and *Forbes* and *Newton, JJ.* in *Dhondu Jagannath* v. *Narayan Ram Chandra*, 1 B. H, 47 and others. In this court the authorities lead to the same result. In *Ramial Mookerjee* v. *Haran Chandra Dhar*, 3 B. L. R, O. C., 130, *Peacock, C.J.*, went even further and held that Act XXVIII of 1855 did not affect the rules of the Hindu Law relating directly to the rate of interest.'

'The anomaly of the present state of the law,' the judgment says in the concluding paragraph, 'if it is to be removed, can only be removed by the Legislature.' That it is a serious anomaly in the law that in Calcutta you cannot, if you are Hindus, get more than the principal sum as interest while in the Mofusil *i.e.*, in places outside the metropolis, you can realize as much as you like, no one can deny for one moment. Cases have cropped up in the provincial courts of Bengal where a party has realized Rs. 20,000 by advancing a loan of Rs. 5,000 only. If it were in Calcutta or Bombay he could not get more than half the amount. This anomaly should be removed by the Legislature.

The next question which arises in connection with the subject of extortionate interest is 'How far our courts of justice will relieve borrowers from hard and inequitable contracts.' In a country like India, millions of contracts are entered into by persons of the most ignorant, improvident and helpless classes, and it is only fair and reasonable that there should be some rule of law to counteract the ruinous results which may otherwise follow. Unfortunately there is much divergence of opinion amongst the views of the several High Courts on this point.

The cases which require prominent mention on this subject are those where a sum is named to be paid in case of breach of contract. Section 74 of the Contract Act governs them. That section says :—'When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. This section does away with the distinction in English Law between 'penalty' and 'liquidated damages.' Whenever in a contract a sum is named as the amount to be paid in case of breach, the court, whether actual damage is proved or not, is bound to award such compensation as it thinks reasonable under the circumstances of the particular case not exceeding the amount named in the contract. In every instance the sum recoverable as damages should be taken into consideration regard being had to the position of the parties and facts of the case.

The stipulation to pay a given sum of money on breach of a contract is quite distinct from that of an obligation to do one thing and in the alternative an independent obligation to do another thing. This distinction, however is not often easy to make from the language of an instrument and there was consequently a good deal of controversy over this amongst jurists and the judges of the several High Courts. Latterly there has been an uniformity of opinion on this subject, although its logical accuracy is open to question.

The stipulation, for instance, that on default in payment of one instalment the whole balance due on the bond is to be paid at once, is not a penal one; it would be so, if on default, a larger sum than that originally due were agreed to be paid. Similarly the stipulation to pay compound interest or interest at a higher rate is not penal in its nature and does not fall within the purview of S. 74 of the Contract Act. In these cases no sum is mentioned to be paid in case of breach.

But if the higher rate of interest in case of non-payment of the principal on the date fixed in the contract is payable from the commencement of the loan, S. 74 of the Contract Act has been held

to be applicable. Curiously enough it does not apply if it is payable from the date fixed for the repayment of the loan. The anomaly of this ruling will be best shown by an illustration. A person sues another on a mortgage bond in which there is a stipulation that the latter borrows a sum of Rs. 5,000 at 2 per cent monthly interest and compound interest at six-monthly rests and that unless the money with interest is repaid within 8 months a higher rate of interest at 4 per cent. monthly will be charged with compound interest at six-monthly rests from the date of the bond. The same person sues another on a bond containing the very same terms of contract excepting that the stipulation to pay the higher rate of interest is to be calculated from the date of the breach and not from the date of the bond in this case. If the suit is instituted after the lapse of six years the claim will be laid at a sum of no less than Rs. 70,000; although the principal lent is no more than a poor five thousand. In the first case according to the present ruling of the High Courts only a reasonable amount will be awarded as compensation to the plaintiff, while in the second case he gets a decree for the whole amount of Rs. 70,000. The difference in these two illustrations lies in a legal quibble which consists in the distinction so prominently made between the stipulation for the payment of the higher rate of interest 'from the date of the bond' and that for the payment of the same 'from the date of the breach.' What charm there is in the words 'from the date of the breach' it is difficult to see. But there is a whole array of cases in our High Courts in favour of this distinction amongst which the cases of *Mackintosh* v. *Crow,* I. L. R, 9 C, 689 and *Nanjappa* v. *Nanjappa,* I. L. R, 12 M, 161 are the most notable. This view of the law was strongly dissented from by *Justices Mitter* and *Macpherson,* in I. L. R, 14 C, 248. The judgment from which I make extracts below shows clearly that their Lordships held that the distinction was unreal and that S. 74 of the Contract Act did not apply in either case.

The judgment of the court after reciting the facts of the case and referring to the case of *Mackintosh* v. *Crow,* I. L. R, 9 C, 689 says:—'It seems to me that whether the interest in the case of non-payment of the principal on the date fixed in the contract is payable from the commencement of the loan, or from the date fixed for the repayment of the loan, S. 74 of the Contract Act has

no application. * * *. In either of the cases mentioned above no amount is *named* in the contract as the amount to be paid in case of breach. It is true that on the date when the breach took place, the amount that under contract would be due on that date to the creditor could be ascertained by arithmetical calculation, but that is not a case where it can be said that the amount is *named* in the contract as the amount to be paid in case of a breach. * * *. The whole amount which, in consequence of the breach, would be payable to the creditor cannot be precisely ascertained on the date of the breach even by arithmetical calculation, because the breach continues so long as the money is not repaid after due date; and, therefore, to use the language used in the judgment of *Mr. Justice Wilson,* " no one can say at the time of the breach what the sum will be." * *. It seems to me, therefore, that in both classes of cases mentioned in the judgment of *Wilson, J.*, S. 74 of the Contract Act is not applicable. The law that is applicable is contained in S. 2, Act XXVIII of 1855, which says: "In any suit in which interest is recoverable, the amount should be adjudged or decreed by the court at the rate (if any) agreed upon by the parties." * * * *. The decision of the Judicial Committee of the Privy Council in the case of *Balkishen Das* v. *Run Bahadur Singh,* I. L. R, 10 C, 305, fully supports the view we take. * * * * *. It seems, therefore, that the case cited by the lower Appellate Court and all the other similar cases cited in the judgment of *Mr. Justice Wilson,* in the cases of *Mackintosh* v. *Crow,* ruling that the stipulation for the payment of a higher rate of interest in the event of the non-payment of the debt on the date fixed in the contract, from the commencement of the loan is in the nature of a penalty, have been overruled by their Lordships of the Judicial Committee in the case cited above.' This view of the law was also held by the Allahabad High Court in the case of *Banwari Das* v. *Mahommed Mashiat,* I. L. R, 9 A, 690. The following paragraph in the judgment deserves notice :—'We thoroughly agree with the opinion expressed by the late Master of the Rolls, Sir George Jessel, in his judgment in *Wallis* v. *Smith,* where he said :—" I have always thought and still think, that it is of the utmost importance as regards contracts between adults, persons not under disability and at arm's length, that the courts of law should maintain the performance of the contracts according to the intention of the parties; that they should not overrule any

clearly expressed intention on the ground that judges know the business of the people better than the people know it themselves. I am perfectly well aware that there are exceptions, but they are exceptions of a legislative character. * * * * *. We can see nothing unreasonable in a man who is asked to lend his money on the security of landed property saying to the would-be-borrower, "You can have the loan on the terms, that if you repay it within one year, you shall pay interest at the rate of 13½ per centum per annum, but if you do not repay the principal with interest within the year you shall pay interest as from the date of the bond at the rate of 27 per cent. per annum"; nor do we see anything unreasonable in the borrower agreeing to accept the loan on those terms. The borrower is under no compulsion to borrow the money from the particular lender, but if he does agree to accept it on the terms stipulated for by the lender, he and his assigns must, if there is no fraud and nothing illegal or obviously unconscionable in the transaction, abide by the contract. Equity does not relieve a borrower from the performance of his contract on the mere ground that his contract was a foolish one or on the ground that he might have made a contract more advantageous to himself by applying elsewhere.*

Thus a proviso for retrospective enhancement of interest in default of the payment at a due date was considered not a penalty by both the High Courts of Calcutta and Allahabad. It has been stated before that a proviso for enhanced rate of interest in the future in default of payment was not considered a penalty by the High Courts of India. Therefore, a proviso either for retrospective enhancement of interest or for a prospective one in default of the payment at a due date was held by both the High Courts of Calcutta and Allahabad as a part of the primary contract between the parties and not penal. This was undoubtedly quite in conformity with the tendency of Courts of Equity as well as of Courts of Law and that is to interfere, as little as possible, with the expressed intention of the contracting parties.

A Full Bench decision of the Calcutta High Court, *Kala-Chand Kyal* v. *Shib Chunder Roy*, I. L. R, 19 C, 392, however, swept away this rule and declored a provision, for enhancement of interest retrospectively to be penal. It held prospective

* See also I. L. R, 15 A, 232—Ed.

enhancement alone good and a validcontract, thus dissenting from and overruling the view of law laid down by *Mr. Justice Mitter* in *Baij Nath Singh* v. *Shah Ali Hosain*, I. L. R, 14 C, 248. The Bombay High Cuort has always held this view. The decisions of the Calcutta and the Bombay High Courts now completely agree on this point, the Allahabad High Court alone standing aloof from them.

The Full Bench case of the Bombay High Court on this point, I. L. R. 17 B, 106, after saying that the question raised in this case was one on which there had been a great diversity of judicial decision and opinion in the several High Courts of India, asserts that by the light of the more recent decisions of the other High Courts, it has been always considered that an enhancement of the rate of interest in default of payment of the principal sum and interest on the day fixed in the bond was in the nature of a penalty whether the enhancement was retrospective taking effect from the date of the loan, or was prospective from the date of default of payment. The effect of the recent decisions is doubtless to distinguish between prospective and retrospective enhancement and to hold that the latter only is in the nature of a penalty,—a distinction apparently suggested by the judgment of *Wilson, J.* in *Mackintosh* v. *Crow*, I. L. R, 9 C, 689. In *Baij Nath Singh* v. *Shah Ali Hosain*, I. L. R, 14 C, 248, however, we find *Mitter* and *Macpherson, JJ.*, holding that the Contract Act is not applicable to either class of cases whether the interest be retrospective from the date of the loan or prospective after default, because their Lordships say "in neither case is a sum named in the contract as the amount to be paid in case of breach." After fully reviewing all these cases and legal authorities on this point the Bombay Full Bench says :—"We think the safer conclusion is that a proviso for retrospective enhancement of interest, in default of payment of the interest at due date, is generally a penalty which should be relieved against, but that a proviso for enhanced interest in the future cannot be considered as a penalty, unless the enhanced rate be such as to lead to the conclusion that it could not have been intended to be part of the primary contract between the parties, as may well be deemed to have been the case in *Bichook Nath* v. *Ram Lochun*, 11 B. L. R, 135 and *Pava* v. *Govind*, 10 B. H. C, Rep, 382.'

Thus there is a difference between the decisions of the Full Bench of the Calcutta and the Bombay High Courts even on their

unanimity with reference to the prospective enhancement of interest not being penal. The Calcutta High Court says that it is never a penalty, but the Bombay High Court says that it is not generally a penalty, which, it would be if the enhanced rate be such as to lead to the conclusion that it could not have been intended to be part of the original contract between the parties. The Allahabad High Court is of the view that it is not a penalty whether the enhanced interest is prospective or retrospective. In the Madras High Court prospective enhancement of interest on default of payment of the principal money is not considered as a penalty, I. L. R, 10 M, 203.*

This being the state of the law, it must be admitted that there is a great diversity of opinion with regard to this point. If the court has a power to relieve borrowers from extortionate transactions in spite of the repeal of the Usury Law by Act XXVIII of 1855, it appears to us that the view taken by the Bombay High Court is a sound one. Every case must be decided on its merits, and if the enhanced rate of interest from the date of the breach be such as to lead to the conclusion that it could not have been intended to be part of the original contract between the parties, the Bombay High Court justly says that it will interfere to relieve the borrower and make the contract a penal one. If, on the other hand, the power of relieving borrowers has been taken out of the hands of the courts by Act XXVIII of 1855, the judgment of the Allahabad High Court and of *Mr. Justice Mitter* that the stipulation for payment of a higher rate of interest was not penal whether the increased rate was to be given from the date of the bond or that of the breach seems to be the correct view of the law.

In every case, however, the "tooth of usury should be grinded, that it bite not too much" is what Lord *B*acon says in his essay on Usury. It seems that the Bombay High Court has kept this principle in view while discussing the law regarding interest in the Full Bench case in I. L. R, 17 B, 106.

But the mere fact that the terms are exorbitant is by itself no ground whatsoever for not enforcing an agreement. The Madras

* As to retrospective enhancement there is a conflict of authority in Madras; see I. L. R, 11 M. 294 and I. L. R, 17 M, 62 on the one hand and I. L R, 12 M, 161 on the other. An attempt to reconcile these cases was made by *Muthusami Iyer J.* in a recent case yet unreported on the ground that the enhanced rate allowed from the date of the bond in I. L. R, 1 M, 294 was reasonable compensation for the breach. Ed.

High Court in I. L. R, 10 M, 203 in the case of *Appa Rau* v. *Suryanarayana* has laid down very clearly the law which should guide the courts in their decision in such cases. It says: 'We think the true principle of decision is that a court should not interfere to protect persons who, with their eyes open, choose knowingly to enter into even somewhat extortionate bargains but that it is only when a person has entered into such a bargain in ignorance of the unfair nature of the transaction, advantage having been taken of youth, ignorance, or credulity, that a Court of equity is justified in interfering, *Mackintosh* v. *Wingrove*, I. L. R, 4 C, 137. But if the bargain is hard and unconscionable the court has a power to relieve borrowers. The Allahabad High Court refused to enforce such a bargain in *Madhu Singh* v. *Kashi Ram*, I. L. R, 9 A, 228. In this case the principal sum was Rs. 99, but it swelled to Rs. 680 as there was compound interest at 2 per cent per mensem, and it was found that advantage was taken by the plaintiff of the fact that the defendant was being pressed in by the *tahsil* for immediate payment of revenue due, to induce him to execute the bond, charging compound interest at the above-mentioned rate, notwithstanding that ample security was given by mortgage of landed property. It was also found that although, under the terms of the bond, the plaintiff had power to enforce the same at any time by bringing to sale the mortgaged property, he had willingly allowed the debt to remain unsatisfied, in order that compound interest at a high rate might accumulate. It was held that the bargain was a hard and unconscionable one, which the court had undoubted power to enforce, and which, under all the circumstances, it would be unreasonable and inequitable for a court of justice to give full effect to; and that, under the circumstances, compound interest should not be allowed. The authorities cited were *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose*, I. L. R, 12 C., 225 (Privy Council) and *Beynon* v. *Cook*, L. R, 10 Ch, App. 389.

It will thus be seen from the above that the Laws of Usury, as prevalent in this country, are still of a very elastic nature and that the relief given by our Courts of Justice are not quite sufficient to protect the interests of needy borrowers from the claws of sharpers and Shylocks. By a stroke of the pen and a little skilfulness in drafting a bond the penalty clause obnoxious to S. 74 can be easily

got rid of. For instance instead of writing in the contract that an enhanced rate of interest after default should run from the date of the bond a shrewd money-lender with the aid of a lawyer may write 'from the date of default.' There are thousand and one ways of avoiding the penalty clause open to people whose profession is to lend money at an usurious rate of interest. Is it not therefore desirable to enforce the Hindu Law of interest, I mean the law of *Damdupat* through out the length and breadth of India ? The rule of *Damdupat* is merely a law of limitation and not one prohibiting a rate of interest, how high soever. Such a change in the law in the Provinces of Calcutta and elsewhere will be welcomed with delight and will be really a boon and a blessing to the rich and the poor, to prince and peasant alike. Being based on the principle of Hindu Law it will not meet with any opposition from the Hindu public. The Mahommedans amongst whom taking of interest is looked upon as a most deadly impiety will never raise their voice against such a beneficient measure. It does not fall within the scope of this article to dwell at length on the misery prevailing among the peasantry and the poorer classes owing to the habits of borrowing money pervading all classes of natives. Instances abound in which the crops of two succeeding years have been pledged before a single clod of earth has been turned up. As to the rate of interest at which these sums are lent, I shall let your readers know what Dr. Hunter says :—'It has been my duty to make enquires in every province of India as to the interest which money yields. I find that for small loans to cultivators the old native rate of 37½ per cent per annum still prevails.' This usurious rate of interest has also brought ruin on many a rich landholder and tradesman. It is not easy to bring to light before a Court of Justice the hard and unconscionable nature of a bargain. The borrower has to labour always under a disadvantage. The court will not relieve extortionate bargains as such unless there is some fraud, misrepresentation, or misunderstanding at the bottom. What an immense impulse would be given to the prosperity of India if the anomaly in the Usury Laws as mentioned above be removed by the Legislature !*

JOGINDRO LOLL CHOWDHRI.

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*We doubt very much whether the remedy proposed by the writer of this article may not be worse than the disease. We are afraid that the borrower will cry "save me from my friend" Interference with ordinary economic laws will drive the debtor more into the hands of the usurious money-lender.—ED.

NOTES OF INDIAN CASES.

Abdul Wahid Khan v. Shaluka Bibi, I. L. R, 21 C., 496. Where one of several parties to a suit appeals on a ground common to him and others and succeeds in the appeal, the fact that these others are also benefited by the result of the appeal is no ground for a claim against them for contribution to the costs incurred in prosecuting the appeal, unless there was some authority, express or implied, given by them to the former to incur expenses on their account. There has been of late a tendency to laxity on the part of the Courts in regard to the question whether the mere fact of expenditure by a person conferring an unintentional benefit on another creates without more a right to reimbursement as against the latter. Where a *bona fide* possessor of property incurs expenses for its preservation, it has been recently held that he may claim repayment of such expenses (*Dakshina Mohun Roy Chowdhry* v. *Saroda Mohan Roy Chowdhry*, L. R, 20 I. A, 260). This doctrine obtained in the Roman Law also. But except in cases of this kind, we do not think that in the absence of express or implied authority, or any special provision of law an expenditure incurred by one can by itself give him a right to repayment against another who has been benefited thereby.

Lukhinarain Jagadeb v. Jodunath Deo, I. L. R, 21 C, 504. This case lays down the important principle that in cases relating to boundaries where the disputed line of division runs between waste lands which have not been the subject of definite possession, and in regard to which no satisfactory evidence is available, the ordinary rule as to the onus being on the plaintiff has no application, and that the courts are bound to settle the boundary upon the evidence before them. The parties to the suit are in the position of counter-claimants and it is the duty of the defendant as much as of the plaintiff to assist the court in ascertaining the true boundary.

Subha Bibi v. Hara Lal Das, I. L. R, 21 C, 519.—This case is the latest addition to the list of authorites opposed to the view taken by the Madras High Court in *Rama Kurup* v. *Sridevi* I. L. R, 16 M, 290. We are inclined to agree with the Calcutta High Court in holding that section 317 of the Code of Civil Procedure is only intended to bar suits between a certified purchaser and any peron who claims that the purchase was really made for his benefit in the name of the former. It might be sound policy to punish a person who puts property into a false name with forfeiture of his right to the same. But we fail to see the justice or expediency of debarring innocent third parties from proving to whom the property really belongs, nor do we see anything in the

language of the section which constrains us to adopt the view taken by the Madras High Court.

Muchiram Barik *v.* **Ishan Chander Chuckerbutti**, I. L. R, 21 C, 568. We agree with the majority of the Full Bench of the Calcutta High Court that a right to recover a loan secured by a mortgage of immovable property is an actionable claim within the provisions of section 135 of the Transfer of Property Act. But we cannot agree with them that if the price paid by the assignee and the incidental expenses of sale are not paid before a judgment of a competent Court has been delivered affirming the claim, or before the claim has been made clear by the evidence and is ready for judgment, the assignee is entitled to judgment for the whole debt. For our part we prefer the reasoning of the minority which is in accordance with the Madras Full Bench decision in *Nilakanta* v. *Krishnaswami*, (I. L. R, 13 M, 225) and the Allahabad decision in *Jani Begum* v. *Jahan Gir Khan*, (I. L. R, 9 A, 476). The conflict of views obtaining between the different High Courts suggests the necessity of an early amendment of the whole chapter so as to render the meaning of the legislature perfectly clear. The only change however which in our opinion will be thoroughly satisfactory is the repeal of the whole of the last chapter of the Transfer of Property Act.

Ananthaiya *v.* **Vishnu**, I. L. R, 17, M, 160. In some respects an illegitimate son occupies a better position under the Hindu Law than a legitimate son. A grown-up legitimate son has no right to maintenance against his father while an illegitimate son is entitled to maintenance all his life. The maintenance is awarded by way of compensation for exclusion from the inheritance. The Madras High Court has decided that such maintenance can, as in the case of maintenance awarded to women, be charged on the family property.

Muhammad Alim Oollah Sahib *v.* **The Secretary of State forIndia**, I. L. R, 17 M, 162. We cannot agree in the decision that a suitor who is condemned to pay costs to the Government has no right to inquire into the terms of remuneration arranged between the Government and its Solicitor. The ordinary arrangement between the Government and its Solicitor is, we believe, that the Solicitor receives a fixed monthly salary and if the Government wins the case, the Solicitor receives in addition the costs awarded to the Government. The practical result is that if the Government loses, the Solicitor receives a comparatively small sum for his services while if the Government wins and the costs can be got out of the opposite party, the Solicitor receives a very much larger sum for his services.

We admit it would be difficult in cases in which standing lawyers are employed at fixed salaries to ascertain how much of the salary should be deemed to represent the value of work done in any particular case. But this is no ground for relaxing the rule. If, on the other hand, the principle of costs is that the party who is ordered to pay it should pay the successful party the cost of his lawyer's services, not according to what they cost him, but according to the legally allowed scale, there is no reason why suitors should not always be allowed in taxation the whole amount of the regulation fee irrespective of what they might have themselves paid to their lawyers. But the invariable practice of the Court has been to allow no greater fee than what has been certified by the lawyer as having been received from his client.

Namasivaya Gurukkal *v.* Kadir Ammal, I. L. R. 17 M, 168 This decision is perfectly sound in so far as it lays down that a contract based on personal considerations cannot be assigned. In so far, however, as it shows that an executory contract is incapable of assignment, it is a new departure and appears to be a distinctly retrograde movement. The learned Judges are no doubt supported by the very high authority of the Supreme Court of the United States in *Arkansas Valley Smelting Company* vs., *Belden Mining Company* (127 U. S. R, 379.) One of the chief requirements of modern times is the existence of facilities for the transfer of rights and the decision under consideration is inconsistent with this requirement. For a full statement of our views refer to the article on Assignment of Contracts in II M. L. J, 403.

Ramapa Udayan *v.* Arumugath Udayan 17 M, 182. We cannot approve of the decision in this case that a daughter's daughter is a *bandhu* under the Hindu law. The learned Judges rely upon *Nallanna* v. *Ponnal* (I. L. R, 14 M, 149.) which held a son's daughter to be a *bandhu* as affording ground for an analogical inference in the case of the daughter's daughter. That decision itself was considered as going beyond all previous authorities in this Presidency. But there is absolutely no warrant for holding the daughter's daughter to be an heir under the Mitakshara. Even in Bombay where the rights of women are favoured, the daughter's daughter is not recognised as an heir (see *West and Buhler's Digest of Hindu Law*, p. 477) In *Nallanna* v. *Ponnal*, the learned Judges refer to the definition of *Sapinda* in the Achara Kanda of the Mitakshara and state that *Sapinda* relationship exists whenever there is connection with particles of the same body directly or indirectly. The learned Judges overlook the fact that, an unbroken line of female descent is utterly foreign to the spirit of the Hindu law. If a daughter's daughter can be an heir, why not a daughter's daughter's

daughter and so on. The statement of the proposition is its own refutation. The case of a son's daughter is distinguishable from the case of the daughter's daughter and may be supported on the ground that she is by birth a member of the *Gotra* of the propositus. The latter on the other hand is neither by birth nor by marriage a member of the *gotra* of the propositus.

Secretary of State for India v. Vydia Pillai I. L. R, 17 M, 193. If a court of limited jurisdiction exceeds its powers and adjudicates on a claim over which it has no jurisdiction, it is an error which the court, if any, exercising appellate jurisdiction over it is bound to correct. If the lower appellate court fails to rectify such an error, the second appellate court is competent to entertain an appeal against the order of the lower appellate court and rectify the proceedings.

Sobhanadri Appa Row v. Chalamanna, I. L. R, 17 M, 225. This decision attempts to solve a difficulty experienced in the working of the Madras Rent Recovery Act VIII of 1865. The period of limitation prescribed for a suit in the civil court for arrears of rent is three years from the time when the arrears become due (art. 110 of the Limitation Act). Ordinarily the rent becomes due at the end of the current revenue year. The end of the revenue year must therefore be taken as the starting point of limitation (*Appayasami v. Subba*, I. L. R, 13 M, 463) unless the rent is made payable earlier under the patta. But by reason of disputes between the landlord and the tenant as to the terms of the *patta* the landlord might not have complied with the requirements of section 7 before the end of the *fasli* and might therefore be unable to claim the rent from the tenant. The principal case decides that when a suit is instituted under section 9 of the Act, the date of the decree marks the time when the rent becomes claimable by the landlord and is therefore the starting point of limitation. We doubt the correctness of this decision. The tender of a proper patta may be a condition precedent to the landlord recovering the rent by suit. But it cannot be said that the arrears become due only after an adjudication by a revenue court compelling the acceptance of a patta. It may be that a change is desirable in the law but the legislature has to effect it. In a more recent case, *Parker* and *Best, JJ.*, have dissented from this decision.

Sundaragopalan v. Venkatavarada Aiyangar, I. L. R, 17 M, 228. Where property is sold in execution of a decree and it is found that the judgment-debtor had no saleable interest in a portion of the property sold, is the purchaser entitled to have the sale set aside *pro tanto* and claim a refund of a proportinate part of the price ? This decision holds that he cannot and is supported by the authority of *Ram*

coomar Dey v. *Shushee Bhooshun Ghose*, I. L. R, 9 C, 626. Section 313 of the Civil Procedure Code provides that the purchaser may apply to the court to set aside the sale on the ground that the person whose property purpoted to be sold had no saleable interest therein and section 315 provides for repayment of the purchase money in such a case. What do the words no saleable interest in the property sold mean ? Do they mean no saleable interest in any portion of the property or no saleable interest in the property as a whole. We are not quite sure that the former construction is the only one which can be placed upon the section. Suppose that a thousand acres of property are sold and it is found that the judgment-debtor had a right only to 500 acres and had no right to the remaining 500. May not relief be given in such case a by ordering the refund of a proportionate part of the purchase-money ? It is no answer to say that because in cases in which the judgment-debtor has an interest in the whole property but the quantum of interest is extremely small, no relief can be given to the purchaser, no relief should be given even in cases in which there is a deficiency in the quantum of the property. Questions as to the quantum of interest are often intricate and a purchaser is prepared for its turning out to be more or less than he believes it to be. But a purchaser usually believes in the existence of the quantum of property described in the proclamation of sale and expects some kind of interest in the same. A deficiency in the quantum of interest may sometimes cause greater loss than a deficiency in the kind or quantum of the property. But while an inquiry into the former would launch the court in the investigation of intricate questions, an inquiry into the latter would not. The disappointment of expectations would also, we think, be greater in the latter case. We are not however prepared to say that the language of the section does not support the decision.

Thapita Peter *v.* **Thapita Lakshmi,** I. L. R, 17 M, 235. This is a very interesting case. A married Hindu who with his Hindu wife embraces Christianity is in the proverbial position of a person who tries to occupy two stools. His marital right and relation are recognized neither by the Hindu law nor by the English law. He is subject to the disadvantages of both the laws without the advantages of either. He can neither take a second wife according to the Hindu law to compensate for the infidelity of the first for that law does not apply nor divorce the unchaste wife according to the English law. The unfortnate man is left to repent of his conversion at leisure and denied all relief.

Makund Ram Sukal *v.* **Saliq Ram Sukal,** I. L. R, 21 C, 590. The ground upon which an award which does not dispose of all the

matters referred to arbitration is held to be invalid is that there is an implied agreement between the parties that it should be valid only if it completely disposed of all such matters. It is therefore competent to the parties to waive such a condition and an award partially dealing with the matters referred to will then be binding upon them.

Abdul Mazumdar *v.* **Mahomed Gazi Chowdhry**, I. L. R, 21 C, 605. The rule that a judgment-debtor who wants to set aside an execution sale at which the decree-holder is the purchaser must under section 244 of the Code of Civil Procedure proceed by an application in the same suit does not apply where the decree itself has been fraudulently obtained and the judgment-debtor desires to impeach the decree as well as the sale on the ground of fraud. Where a plaintiff procures the suppression of the sommons and a false return of service and obtains a decree *ex-parte*, the defendant can obtain relief against the fraud by a separate suit to set aside the *ex-parte* decree and is not confined to an application under section 108 of the Code of Civil Procedure.

Mahomed Golab *v.* **Mahomed Sulliman**, I. L. R, 21 C, 612. We are glad to find that the views expressed by us in our critical note on *Krishna Bhupati* v. *Ramamootri* III M. L. J, 182, in regard to the competency of a suit to set aside a judgment obtained by perjured testimony have received the sanction of the Calcutta High Court. The true principle as to the setting aside of decrees for fraud has been clearly stated by *Petheram, C. J.* Where a decree has been obtained by a fraud practised upon the other party by which he was prevented from placing his case before the tribunal which was called upon to adjudicate upon it in the way most to his advantage, the decree is not binding upon him and may be set aside by a separate suit, as well as by an application in the same suit. But a fresh suit will not lie to set aside a decree alleged to have been obtained by perjury committed by or at the instance of the other party.

Tincouri Debya *v.* **Shib Chandra Pal Chowdhury**, I. L. R, 21 C, 639. We must confess to great doubt as to the correctness of this ruling. A decree was obtained in the sub-court of Nuddea on a mortgage-bond which hypothecated among other properties some which were situate outside the local jurisdiction of the court.

The subordinate judge undoubtedly had jurisdiction to entertain the suit and pass a decree in respect of the properties outside his jurisdiction also. But had he jurisdiction to hold a sale of such properties in execution of the decree? The answer returned by the learned judges is yes. We have fully discussed the question at 2 M. L. J., p. 119. We

are unable to see anything in the judgment under notice to induce us to change our opinion.

Gajraj Puri v. Achaibar Puri—I.L.R. 16 A, 191. We cannot imagine what use there is in reporting a case of this description even though it happens to be a decision of the Judical committee of the Privy Council. There is no question of law decided and there can be no other case for which it will serve as a precedent. The accumulation of reports is becoming a crying evil and what the twentieth century may do with the piles of reports it is impossible to foretell. Meanwhile, reporters are not doing any service to the profession by adding unnecessarily to their bulk. Mr. Dillon in his recent lectures on the Laws and jurisprudence of England and America bewails the lot of the unhappy lawyer of his country whose professional requirements demand an acquaintance with 3,000 volumes of English and 3000 volumes of American reports. We hope that the experience of England and America, may be a warning to those engaged in the manufacture of reports in this country.

Queen Empress v. Nasir-ud-din:—I.L.R. 16 A, 207. Statements made to a police officer under S. 161 of the Criminal Prodeduce Code cannot be used as evidence against the accused, vide S. 162. But we fancy notwithstanding some authorities to the contrary they may be used by the accused in his favour. See 2 M. L. J, 173. It must however be remembered that the police officer is not bound to record the whole or any part of the statement made to him and therefore, if used at all, it has to be used carefully. But we are unable to agree with *Knox, J.*, when he says that copies of the statements should not be made over as a matter of course to the accused or his counsel.

Ghamandi Lal v. Amir Begam,—I.L.R. 16 A, 211 This appears to be a case of first impression though the principles governing the decision are well settled. When an appellant dies leaving several representatives, the judges hold, one among them cannot go on with the appeal any more than one of several representatives of a deceased person can sue in respect of his estate without impleading the others. This may seem an inconvenient procedure but we fail to see how the court can rule otherwise, consistently with the established practice in allied cases.

The procedure as to the joinder of representatives of deceased parties in cases of dispute is however far from satisfactory. There is a great deal of confusion characterizing the action of the courts and we have not been able to deduce any generally accepted principles from thedecisions. Ss. 367 and 368. Contemplate stay of proceeding pending settlement of the dispute in another suit or an adjudication by the court itself.

Now the first question will be what is the effect of an adjudication by the court ? Will it have the effect of setting at rest (subject to an appeal if any) the dispute as to the representative title between the contending claimants so far as regards the subject matter of the suit? We don't know what answer the courts have to give to this question. Is it open to the courts to adopt a third course, namely to put both the contending claimants on the record? The courts seem to say, yes. (See *Lakshmibai* v. *Santapa*, I.L.R, 13 B, 22 and *Athiappa* v. *Ayyanna*, I.L.R, 8 M, 300) though we don't see how We await with interest a decision dealing with these questions in a thorough-going manner

Rama Nand *v.* **Surgiani**:—I.L.R, 16 A, 221. It seems impossible to rehabilitate the status of women under the Hindu law except by the interference of the legislature: Public opinion is preparing the ground but the legislature in this country is very slow to move if invited to take even a small step in the direction of improving the Hindu Law. The Madras High Court has been steadily moving in the direction of recognizing the heritable capacity of female relations. The sister, the fathers' sister, the sons' daughter, the daughters' daughter and recently the sister's daughter have been included in the circle of women capable of inheriting. But all the High Courts except that of Bombay have set their faces against the inclusion of widows of the family. The step-mother not coming within the term mother, has also been excluded like the widows of collaterals. The inquiry however is worth instituting whether under the Hindu Law there is any authority for the position that the widow of the last male member of an undivided Hindu family is entitled to inherit the property in preference to the widows of other members earlier deceased. If the property is coparcenary property and women are also members of the joint family, why should it be treated as the exclusive property of the last male owner descendible only to his widow? Our doubts may seem heretical; but we would like to have the texts and commentaries thoroughly examined before they are asked to be put aside.

NOTES OF ENGLISH CASES.

Henderson *v.* **Astwood**. **Astwood** *v.* **Cobbold**, **Cobbold** *v.* **Astwood**, 1894, A.C, 150 A mortgagee with power of sale in case of default sold the mortgaged premises by public auction ostensibly to a third person but in reality to himself, took possession as owner and subsequently sold the same with improvements effected by himself in full proprietary right to the appellant.

Held that the power of sale was not exhausted by the ineffectual sale of the mortgagee to himself and that the sale to the appellant was a valid exercise of the power and extinguished the right to redeem.

Though it was the duty of the mortgagee to account to the mortgagors until the power of sale was validly exercised and to offer so to do, it was not the duty of the purchaser, appellant, to give notice to the mortgagees to that effect or to see to the application of the purchase-money.

The mortgagee was entitled to the cost of his improvements so far as they had enhanced the value of the premises.

Union Steamship C. *v*, **Claridge**, 1894, A. C, 185. Held that the shipowners were liable for injury caused by the negligence of a winchman in their service to a servant of the stevedores at the time of their loading the ship, the winchman not having been in the employ or under the control of the stevedores.

Thorne *v*, **Heard**, 1894, I. C, 599. The defendants, first mortgagees of certain property, sold it under a power of sale to their solicitor S. S received the sale moneys and after satisfying the defendant's mortgage, retained a surplus falsely representing to the defendants that he had the authority of the second mortgagee, the plaintiff, to receive the same. S misappropriated the money and concealed his fraud by continuing to pay the plaintiff interest on the second mortgage, as though it was still existing. S became bankrupt in 1892 when the fraud was discovered. In an action by the plaintiff against the defendants for an account of the sale-moneys and payment of the amount due on the second mortgage, *Held* that the plaintiff's claim was barred by the Statute of Limitations and s. 8 of the Trustee Act 1888, on the ground that the cause of action occurred in 1878, when the defendants committed an innocent breach of trust in allowing S to receive the surplus moneys instead of handing them over to plaintiff, and not in 1892, when the plaintiff discovered S's fraud, and that the defendants were not liable under the exception in S. 8, either as having been 'party or privy' to the fraud of S, or as having still retained the money sought to be recovered, the money not having been actually in their hands or under their control at tho commencement of the action.

Held also that the fraud of S could not be regarded as the fraud of the defendants, *i.e.*, as a fraud committed by S as agent for them for their benefit, so as to render them responsible notwithstanding they were innocent of the fraud.

In re **Lands' Allotment Co.**, 1894, I., Ch., 616. Directors of a company are trustees as to moneys of the company which have come to

their hands or are under their control, within the meaning of the Trustee Act 1888, S. 1, sub-section 3, and therefore can under the Statute of frauds take advantage of the provisions in the Statute of Limitations in proceedings against them for misapplication of the funds of the company.

In re **Taylor. Taylor** *v.* **Wade**, 1894, I, Ch., 671. Where a debtor to a testator's estate is a specific legatee of the profits of a business represented by moneys in the hands of the executors, the executors may retain such moneys as against the debt.

In re **L'Herminier. Mounsey** *v.* **Buston**, 1894, I., Ch. 675. Where a testamentary power of appointing the income of a personal estate was given by deed and subject to such appointment of the income, trusts of the capital were declared, *held* that the power extended to the capital.

In re **Bawden. National Provincial Bank of England** *v.* **Creswell, Bawden** *v* **Creswell,** 1894, I. Ch. 693. The principle of *Greville* v. *Brown*, 7 H. L, 689, whereby, under a gift of legacies followed by a gift of residuary real and personal estate, the legacies are held to be charged on the residuary real estate, is not confined to cases in which the residuary real and personal estates are given together as 'residue' or 'the rest' or the like. Where a testator after making specific devises and bequests bequeaths pecuniary legacies and then gives and devises all the real and personal estate not otherwise disposed of to his executor absolutely and the personal estate is insufficient for the payment in full of the debts and pecuniary legacies.

Held that the legacies were charged on the residuary real estate and that the pecuniary legacies are not liable to contribute to the debts but that the residuary real estate must contribute to the debts rateably with the specific devisees and legatees according to its full value without deducting the amount of the pecuniary legacies.

Verner *v.* **General and Commercial Investment Trust**, 1894, 2 Ch. 239. These is no law which prevents a company from sinking its capital, the purchase or production of a money-making property or undertaking and dividing the money annually yielded by it without preserving the capital sunk so as to be able to reproduce it intact either before or after the winding-up of the Company.

Fixed capital may be sunk and lost by a company and yet the excess of current receipts over current payments may be divided but floating or circulating capital must be kept up as otherwise it will enter into and form part of such excess in which case to divide such excess without deducting the capital which froms part of it will be contrary to law.

In re **Both**. **Both** *v.* **Both**, 1894, 2 Ch., 282. Where a testator gave the residue of his estate to his executors on trust to pay to his wife the annual income of the same during her life for her use and benefit and for the maintenance and education of the testator's children and after her death upon trust to divide the residuary estate equally between all his children living at his death, *held* that the widow took the income subject to a trust for the maintenance and education of the children though she might have a discretion to determine which child required maintenance and how much should be spent for it and that the trust was not confined to children who were minors or unmarried.

Sins *v.* **Landray**, 1894, 2 Ch., 318. Where there is a sale by public auction and the property is knocked down by the auctioneer to the highest bidder, the auctioneer is not only the agent of the vendor but is also the agent of the purchaser the highest bidder; and as purchaser's agent he is entitled to sign in the name and on behalf of the purchaser a memorandum sufficient to satisfy the provisions of the Statue of Frauds stating the particulars of the contract.

Jones *v.* **Daniel**, 1894, 2 Ch., 332. Where an offer to purchase a property was accepted by a letter which stated that it enclosed a contract for the purchaser's signature and such enclosure, was a contract with usual condition of sale providing for a deposit of 10 per cent., fixing a date for completion and limiting the period of the vendor's title, *held* that the letters did not constitute a contract as the acceptance contained special terms which had not been referred to in the offer.

MISCELLANEOUS.

We beg to acknowledge with thanks the receipt of the following legal publications :—

The Canada Law Journal for June (*in exchange*).

The Canadian Law Times for June (*in exchange*).

The Green Bag for June (*in exchange*).

The Western Law Times for June (*in exchanqe*).

The American Law Review for July and August (*in exchange*).

Review·—*A treatise on the law of res judicata by Hukm Chand, M. A*:—We have much pleasure in commending this book to the notice of our readers. It will prove a valuable addition to the lawyer's shelf. The subject of *res judicata* is one that constantly comes up for discussion before the courts of this country and a book that can throw any

light upon the numerous problems that arise in connection with it cannot fail to be of use to a practising lawyer. The research of the author is highly praiseworthy. He has collected a large mass of decisions, Indian, English and American, bearing on the subject. In the learning and comprehensiveness of the book it is much superior to Mr. Broughton's which we have noticed in our pages before and to the Tagore lectures of *Mr. Caspersz.* We might however express a wish that the author had digested his learning better. The book has been made unnecessarily bulky by references to cases which do not advance the argument of the author. The book is therefore likely to be bewildering to the student. If, for example, instead of devoting five pages, (*vide* pp. 173 to 177) to the citation of cases on *res judicata* between parties on the same side, the author had stated the principle in a few sentences and referred to the cases in a foot-note, the rule of law would have been made more intelligible. We do not mean to deprecate the citation of cases which point the application of a principle in different sets of circumstances. But where the facts of cases are perfectly analogous, it is a mere waste of space to detail the facts of each case. Again, in dealing with *res judicata* as regards decisions on compromise (*vide* pp 126 to 127) cases are cited without any discussion. The author draws a distinction between the effect of a decreeing of the suit on compromise and a dismissal of the same, holding that it will amount to a bar to a subsequent action in the latter case but not in the former. We are unable to appreciate this distinction. It seems to us that a decision passed on compromise, whether it amounts to a dismissal or a decreeing of the suit is *res judicata,* so far as regards the subject-matter of the suit, and the questions directly decided by the decree on the conpromise. It cannot have the force of *res judicata* as regards the issues not decided, however necessary their determination might have been, if the suit had been tried. As regards the effect of a decree which is silent as to subsequent mesne profits claimed, in a subsequent action for the same profits, we cannot agree with the criticism of the author on the decision in *Mon Mohan Sircar* v. *The Secretary of State for India,* I. L. R, 17 C, 968. See the notes on *Ramabhadra Razu* v. *Jagannadha Razu,* I. L. R, 14 M, 328 in 1 M. L. J, p. 177. We need not add that we do not agree with the author as to whether the decision on a point of law can have the force of *res judicata* in a subsequent action. There is considerable authority in support of the author's view but we have given our reasons for dissenting from it elsewhere.

The book will be chiefly valuable as a repertory of decisions, but the absence of a copious index is likely to place the practising lawyer at

considerable disadvantage. The list of *addenda* and *corrigenda* should have been cut down to smaller dimensions. But in spite of defects of this kind, we can confidently say that very few Indian publications in the field of law come up to the level of ability attained by the author.

Civil Procedure Code S. 285 ·—S. 285 of the Civil Procedure Code has been made the subject of discussion in the August number of the Bombay Series of the Indian Law Reports in the case of *Patel Naranji Morarji* v. *Haridas Naralram* I. L. R, 18 B, 458. And the learned judges, the *Chief Justice, Sir Charles Sargent* and *Mr. Justice Bayley* have thought it right to take the opportunity of expressing their opinion that the Civil Procedure Code shoud be amended so as to remove all doubt as to the proper application of sections 285 and 295 to the different cases which are constantly arising in practice in the execution of concurrent decrees,

In the case of *Bykant Nath Shaha* v. *Rajendro Narain Rai* I. L. R, 12 C, 333 the learned judges of the Calcutta High Court who decided that case doubted whether S. 285 applied to immoveable property at all though their decision of the case was not based on that point. But it is not easy to see any reason for the doubt thrown out. Subsequent decisions of the several High Courts do not seem to give support to that view; and from the position of the section in Chapter XIX of the Code dealing with Execution of Decrees sub-heading (*f*) "Attachment of Property" which deals with property both moveable and inmoveable and in which the nature of the property has been specifically mentioned in those sections which deal with a particular kind of property and not with property generally as in this section 285, it is quite clear that the section was intended by the Legislature to apply to property both moveable and immoveable.

In order to understand the other point relating to the construction of S. 285 it is necessary to give the words of the section which are "where property not in the custody of any Court has been attached in execution of decrees of more courts than one, the court which shall receive or realize such property, and shall determine any claims thereto and any objection to the attachment thereof, shall be the Court of highest grade, or where there is no difference in grade between such Courts the Court under whose decree the property was first attached" The point which has given rise to difference of opinion between the several High Courts is whether a sale of property by an inferior Court during the subsistence of an attachment of the same property by a superior Court is a nullity or not. The Allahabed and Madras High Courts, following the strict letter of the law have held that the sale under the

above circumstances by the inferior Court is, under the provisions of S. 285 of the Code, null and void. But the Calcutta High Court has decided the other way.

In the matter of the petition of Badri Prasad v. *Saran Lal* I.L.R, 4 A, 359, attachments of the immoveable property of the judgment-debtor had been made by the subordinate judge as well as by the Munsif and notifications of sale issued The judgment-debtor then applied to the subordinate judge for a postponement of the sale and it was granted; he made a like application to the Munsif who refused to permit any further delay and sold the property. It was admitted that the Munsif was aware of the proceedings in the Subordinate Judge's Court. The Allahabad High Court held that the sale by the Munsif under the above circumstances was bad and set aside the sale.

In the case of *Aghore Nath* v. *Shama Sundari*, I. L, R 5 A, 615, the learned judges simply followed the decision in I. L. R, 4 A, 359, without discussing the question at all. And from the judgment it does not appear whether the Munsif was aware of the attachment by the District Judge when the sale order was made

The Madras High Court, in the case of *Muttu Karuppan* v. *Muttu Ramalinga*, I.L.R, 7 M, 47, does not find whether the Munsif was aware of the attachment of the property by the Subordinate judge yet they hold that the sale by the Munsif was null and void as against the subsequent sale by the Subordinate judge.

In the case of *Bykant Natth Shaha* v. *Rajendro Narain Rai*, I. L. R, 12 C, 333, the Calcutta High Court held that the sale by the Munsif was valid sale. But the judges proceeded mainly, on the fact that neither the Munsif nor the parties concerned (the decree holder and the auction purchaser) had any knowledge of the attachment by the Subordinate Judge according to them the mere existence of an attachment by the Subordinate judge would not of itself invalidate the proceedings of the Munsif. The learned judges point out that the object of S. 285 no doubt is to prevent confusion in execution proceedings by providing for certain proceedings to be held by the Superior Court where the courts of execution are of different grades or by the first attaching Court where all the courts have equal jurisdiction and they admit that strictly speaking no such proceeding should be taken except under the direction of one of these two courts.

In the case of *Dwarka Nath Das*, v. *Banku Behari Bose* in I. L R, 19 C, 651, the learned Judges of the Calcutta High Court without giving any reasons for their decision followed the decision in the above mentioned case. They do not seem to have noticed that in the last case the

learned judges relied to a very great extent on the fact of the want of knowledge on the part of the Munsif of the existence of the attachment by the superior court.

From the two cases quoted it cannot be doubted that there has been a difference of opinion as to the proper construction of the S. 285 The decisions of the Allahabad and Madras High Courts inflict great hardship on the purchasers at the sale by the Munsiff and the Calcutta High Court has been more fair towards the purchasers. And it is for this reason apparently the learned judges of the Bombay High Court followed the Calcutta High Court decisions in their judgment in the case under discussion in which they throw out the suggestion for amending the section. It is no doubt a matter of some importance and it is desirable that the Legislature should make its intentions more clear *S. C. Biswas.*

Right of a solicitor to retire from a case:—Of late several cases of importance to solicitors have been decided by the Court of Appeal, but probably the most interesting was that in which it was held that the right of a solicitor to sue for his costs is lost, if in a common law action he throws up the case without reasonable cause. On the one hand it may be said that, the client having the right to change solicitors, there should be a correlative right on the part of the solicitor to leave his client, of course on reasonable notice; on the other hand it would seem a hardship on the client if, having instructed a skilled person in the facts of the case, he should be driven to give his instructions over again to another, perhaps being obliged to do this three or four times during the course of the action. The simple point for determination is the exact contract entered into by a solicitor with his client.

It seems strange that such a matter should have been left to be argued before a modern court. In fact, the point seems to have been decided beyond all reasonable doubt in the early part of the century. For instance, in *Cresswell* v. *Byron*, 14 V., 271, Lord Eldon is reported to have said, 'The Court of Common Pleas, when I was there, held that an attorney, having quitted his client before trial, could not bring an action for his bill.' Some later authorities seem to point the other way, though the attempt to found an argument upon them was never really successful; such cases are *Harris* v. *Osborne*, 3 L. J. Ex., 182; 2 C. and M., 629; *Vansandon* v *Browne*, 2 L. J. C. P. 34; 9 Bing, 402. In the first of these it was settled only that the contract between attorney and client was to carry on the suit to its termination, determinable by the attorney on reasonable notice only; this somewhat differs from the proposition that provided he give reasonable notice, he may

abandon the client without reasonable ground. So far the law seems to have been clear, but the late Master of the Rolls, in the case of *In re Hall and Barker*, 47 L. J. Ch, 621, L. R, 9 Ch. D, 538, did something to unsettle the law, and to make it possible to suggest that the former rule no longer held good The headnote to that case is as follows: 'The old rule of common law that the retainer of a Solicitor for a particular business is a retainer for the purpose of carrying through that business to a conclusion, and that until that conclusion he has no right of action against his client, is founded on the principle of entirety of contract, and is not to be extended to the case where a solicitor undertakes a business of a complicated nature—*e. g*, the administration of an estate; in such case the solicitor's bill of costs for carrying such business through is not necessarily to be treated as one bill.' But it is the terms of the judgment which throw doubt upon the correctness of the old decision as applied to modern litigation.

A case of considerable importance in this connection came before the tribunals last year—*viz*, *In re Romeo and Haslam*, 62 L, J. Q B., 610; L. R. (1893), 2 Q. B., 286. The exact point now being dealt with was not raised, but in the course of his judgment *Lord Esher* said· 'if a solicitor undertakes to carry through a particular legal transaction, the law says he cannot send in to his client a final bill until that transaction is completed. I take it that that principle of law has been acted upon, and is the same in courts both of law and equity; but in the courts of equity, where the transaction was such that it could be divided into several stages, the court treated certain stages in the suit as completed, although the whole suit had not been carried to a conclusion.' And *Lord Justice Bowen* after enunciating, with approval, the old common law rule, said that *In re Hall and Barker* showed that it would not apply to all equity matters. *Lord Justice Kay* said, 'if the matter in respect of which the solicitor is retained be a simple matter, then, *prima facie*, the contract with the solicitor is an entire contract, and he is not entitled to send in his bill of costs to his client and insist upon payment until that matter has been concluded; but where the matter is of a complicated character, and involves, for instance, considerable outlay, then it is very difficult to apply a principle of that sort to matters on either the Chancery or common law side, or in arbitration, or in bankruptcy, or winding-up proceedings, where it may be unreasonable to say that the solicitor is to have no remedy for his costs, or to any part of them, until the matter in question has been concluded.' And the question remained in this state until May of the present year, when *Underwood, Son and Piper* v. *Lewis*, L. R. (1894),

2 Q. B, 306, came up to the Court of Appeal. It was then dicided that the old cases were still correct, so far, at any rate, as they relate to actions of a common law character. The contract of a solicitor who accepts a retainer in a common law action was declared to be an entire contract to conduct the case of the client until the completion of the action; and it was so held that he is not entitled without good cause, to decline to act further in the action for him, and thereupon to sue for costs in respect of the previous conduct of the client's case. Good cause is a matter for determination in each case, but refusal of a client to supply funds requisite for the carrying on of the action is good cause. 'A solicitor,' said Lord Esher, 'cannot reasonably be expected to disburse out of his own pocket money which he may be unable to get back from his client or the other side, or which, at any rate, he may be kept out of for a long time.' But even if there be good cause for retiring, the solicitor must give the client a reasonable notice before he withdraws from the action. The result is that *In re Hall and Barker*, so far as it throws any doubt on this proposition, is overruled; though its application to a certain class of Chancery proceeding is by no means interfered with.—The *Law Journal*.

Divorce in America:—In your column recently I saw an account of an action for divorce brought by a husband in one of the state Courts on the ground that his wife bleached her hair. This may sound like a joke to most English readers, but the cause of action is not more trivial than many other causes for which divorce is granted in this country. The states vary greatly in their divorce systems. In South Carolina no divorce is granted for any cause; in New York no absolute divorce except for adultery; in all the other states there are from two to eight statutory grounds, a few of the states even authorising divorce for any cause that may seem sufficient to the Court. For example: 'ungovernable temper,' in Kentucky; 'habitual indulgence in violent and ungovernable temper' in Florida; 'cruel treatment, outrages, or excesses such as to render their living together insupportable,' in Arkansas, Kentucky, Louisiana, Missouri, Tennessee and Texas; 'such indignities as render life burdensome,' in Oregon, Pennsylvania, Washington Territory, and Wyoming; 'husband notoriously immoral before marriage, unknown to wife' in West Virginia; 'fugitive from Justice' in Virginia; 'gross misbehaviour or wickedness,' in Rhode Island; 'any gross neglect of duty,' in Kansas and Ohio; 'attempt on life,' in Illinois; 'refusal of wife to remove into the state,' in Tennessee; 'three years with any religious society that believes marriage unlawful,' in Massachusetts; 'joining any religious sect that believes marriage unlawful, and refusing to cohabit six months,

in New Hampshire; 'parties cannot live in peace and union,' in Utah; 'settled aversion which tends to destroy all peace and happiness,' in Kentucky. In several states divorce is granted for a single act of 'cruelty,' even for a single false accusation of unchastity, as in Kansas, Texas, Montena, Michigan, and Nevada. Of 328,716 abselute divorces granted in the United states between 1867 and 1886, 65 percent. were granted to wives; 6,122 husbands obtained divorces on account of the cruelty of their wives! To illustrate the laxity with which the divorces are granted by the Courts I have culled the following from the Government records of strange or trifling causes for which dissolution of marriage has been granted here: Wife got divorce because husband keeps a saloon, and keeps his wife awake by talking; does not wash himself; has accused his wife's sister of stealing; does not speak to his wife for months at a time; made her climb a ladder to drive nails, and 'lassoed' her on her way down; abused her for having two teeth 'pulled"; makes her drop on her knees and imitate a dog when he cries, 'Down, charge." makes her black his boots; treats her as a child; enlisted in the navy: importuned her to deed him her property; quotes scripture about wives obeying their husbands; threw her 'little curly dog into the fire, and then I broke down'; has never offered to take me out riding'; will not work except on Sundays; hard work and poor fare; husband got divorce because wife refused to cook, and never sewed on his buttons; pulled him out of bed by his whiskers; called him 'a good-for-nothing vagabond'; goes gadding, and makes him cook his own supper; took all the covering off the bed, leaving him to shiver till morning; keeps him awake nights trying to get him to convey his property to her; would not walk with him on Sunday, and 'heaved' a teapot at him and pulled out his hair (tuft marked 'Exhibit A'); evinced a hasty temper; shot an old sweetheart; on the bridal tour fell in love with a German; made him eat at a restaurant under threat of her brothers thrashing him. These are all cases derived from Government statistics, as reported by Mr. Carroll D. Wright, officially commissioned to report to Congress on the subject. You will see that the husband who felt outraged because his wife bleached her hair is not without encouraging precedents.—*The Law Journal.*

Law Libraries in the United States:—A recent Government publication (Bureau of Education circular of Information No. 7) gives some interesting statistics of public libraries in the United States and Canada, collected by Weston Flint, statistician of the Bureau. From this circular we derive some figures regarding law libraries.

There is no indication as to how many of the 659,843 books and 210,000 pamphlets in the Library of Congress are law books, but we

believe there are between 50,000 and 60,000. The largest distinctively law library in the list is that of New York state, at Albany, credited with 45,982 books and 22,761 pamphlets; next come the two large libraries of the Law Institute and the Bar Association in New York City, each containing over 40,000 volums. There are no others mentioned as having over 30,000 volumes, except the San Francisco Law Library, with 31,000 volums. Next in order come the Library of the Harvard Law School, with 28,157 volums; the Social Law Library of Boston and the Philadelphia Law Association Library, with 25,000 volumes each; the Chicago Law Institute, with 24,618; the Department of Justice at Washington, with 21,000; and the Minnesota State Law Library at St. Paul, with 20,679. Doubtless some of the other State dibraries belong in this class, although no special record is made in the table of the number of law books contained in them. Thus, the Georgia Supreme Court Library has, we believe, about 25,000 volumes of law books; the Wisconsin State Library, 23,000; and probably Pennsylvania, California, Michigan, Maryland, and Louisiana have each upwards of 20,000. The Law Library of Columbia College contains about 25,000 volumes, and that of Cornell University about 23,000. The latter was recently brought up to the front rank by the generous gift of the widow and daughter of the late Judge Boardman, who purchased the famous library of the late Nathaniel C. Moak, probably the most complete private law library in the country.

About 20 libraries are given as containing between 10,000 and 20,000 volumes, being, in the order of their size, the St. Louis Bar Library, Alabama State Library, Indiana State Library, Cincinnati Law Library, Allegheny County (Pa.) Law Library, Ohio State Library, Brooklyn and Syracuse Judicial Libraries, Equitable Life Insurance Building, New York City, Rochester Judicial Library, Rhode Island State Library, Memphis Bar Library, Illinois Supreme Court Library at Mount Vernon, San Francisco Law Library, Cleveland Bar Library, Texas Supreme Court Library, Southern Pacific Law Library at San Francisco, Virginia State Library, North Carolina State Library. To this list, again, should be added the Ohio State Library, with 15,000 volumes, and probably also the State Libraries of Kansas, Nebraska, Vermont, Kentucky. New Jersey, Tennessee, New Hampshire, and Nevada: also the Library of the Michigan University Law School, containing about 11,000 volumes.—*The Law book News.*